

Appeal No. 2023-1922

**UNITED STATES COURT OF APPEALS FOR THE FEDERAL
CIRCUIT**

BEARBOX LLC, AUSTIN STORMS,

Plaintiffs - Appellants,

v.

LANCIUM LLC, MICHAEL T. MCNAMARA, RAYMOND E. CLINE, JR.,

Defendants - Appellees.

Appeal from the United States District Court for the District of Delaware in Case
No. 1:21-cv-00534, Judge Gregory B. Williams

**CORRECTED RESPONSE TO MOTION OF PLAINTIFFS-APPELLANTS
FOR A 35-DAY EXTENSION OF TIME TO FILE THE PRINCIPAL BRIEF**

Defendants-Appellees Lancium LLC, Michael T. McNamara, and Raymond E. Cline, Jr. (collectively, “Lancium”) respectfully oppose the Motion of Plaintiffs-Appellants (collectively, “BearBox”) for a 35-Day Extension of Time to File the Principal Brief for Plaintiffs-Appellants (the “Motion”) because good cause does not exist for the requested extension.

On April 5, 2023, the District Court entered final judgment, which BearBox now appeals, on rulings that were issued between February 2, 2022 and March 6, 2023. The prior rulings were as follows:

On February 2, 2022, the District Court issued an Order (D.I. 97), adopting a Report and Recommendation issued on January 18, 2022 (D.I. 92), dismissing with prejudice Count V (negligent misrepresentation) of Plaintiffs’ Amended Complaint (D.I. 19);

On April 25, 2022, the District Court issued a Minute Entry striking Count III and Count IV of the SAC, which alleged claims of trade secret misappropriation against Defendants

On October 7, 2022, the District Court issued a Memorandum Opinion (D.I. 212) and Order (D.I. 213), adopting a Report and Recommendation issued on May 26, 2022 (D.I. 143), dismissing with prejudice Count VI of the SAC alleging unjust enrichment against Defendants;

On November 14, 2022 the District Court issued a Memorandum Opinion (D.I. 230) and Order (D.I. 231) granting summary judgment in favor of Defendants and against Plaintiffs on Count V of the SAC alleging conversion against Defendants; and

On March 6, 2023, the District Court issued a post-trial Opinion (D.I. 262) and Order (D.I. 263), finding in favor of Defendants and against Plaintiffs on Count I and Count II of Plaintiffs' Second Amended Complaint (D.I. 103) (the "SAC"), which alleged claims seeking to correct inventorship for U.S. Patent No. 10,608,433 to name Austin Storms as the sole or a joint inventor of the patent.

On the 29th day following entry of the Final Judgment, BearBox filed its Notice of Appeal. (D.I.274.) By the time it is due on July 21, 2023, BearBox will have had a minimum of four-and-a-half months to consider its grounds and prepare its brief on the last Counts decided against it and up to seventeen months to consider and prepare for any appeal on the earliest Counts decided against it.

Under Federal Circuit Rule 26(b)(3) a request for an extension of more than fourteen days must be accompanied by a declaration "showing good cause for the extension." Fed. Cir. R. 26(b)(3). BearBox's Motion and the accompanying Declaration of Benjamin T. Horton (the "Horton Declaration") do not show good cause for the requested 35-day extension on top of the time BearBox has already

had. The Horton Declaration identifies only non-specific but normal workload activities by Mr. Horton and a one-week vacation ending two weeks before BearBox's principal brief is due. Neither the Motion nor the Horton Declaration identify any basis for the extension relating to the other three attorneys that have filed appearances other than non-specific "competing demands, both professional and personal, throughout July and August." Horton Decl. at ¶ 8. This does not constitute good cause.

Additionally, BearBox has not addressed why a 14-day extension, which Lancium advised it would not oppose provided BearBox would not oppose a corresponding 14-day extension of Lancium's response brief deadline, is not sufficient.

For these reasons, the Motion should be denied.

Date: July 6, 2023

s/ Adam M. Kaufmann

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FORM 9. Certificate of Interest

Form 9 (p. 1)
March 2023

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF INTEREST

Case Number 2023-1922

Short Case Caption Bearbox LLC v. Lancium LLC

Filing Party/Entity Lancium LLC

Instructions:

1. Complete each section of the form and select none or N/A if appropriate.
2. Please enter only one item per box; attach additional pages as needed, and check the box to indicate such pages are attached.
3. In answering Sections 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance.
4. Please do not duplicate entries within Section 5.
5. Counsel must file an amended Certificate of Interest within seven days after any information on this form changes. Fed. Cir. R. 47.4(c).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 07/06/2023

Signature: /s/ Mark C. Nelson

Name: Mark C. Nelson

FORM 9. Certificate of Interest

Form 9 (p. 2)
March 2023

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2).	3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. <input checked="" type="checkbox"/> None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. <input type="checkbox"/> None/Not Applicable
Lancium LLC		Lancium Inc. SBI Crypto Investment Company Ltd.

☐ Additional pages attached

FORM 9. Certificate of Interest

Form 9 (p. 3)
March 2023

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

☐ None/Not Applicable ☒ Additional pages attached

Barnes & Thornburg LLP

Mark C. Nelson of Barnes &
Thornburg LLPAdam M. Kaufmann of Barnes &
Thornburg LLP

5. Related Cases. Other than the originating case(s) for this case, are there related or prior cases that meet the criteria under Fed. Cir. R. 47.5(a)?

☐ Yes (file separate notice; see below) ☒ No ☐ N/A (amicus/movant)

If yes, concurrently file a separate Notice of Related Case Information that complies with Fed. Cir. R. 47.5(b). **Please do not duplicate information.** This separate Notice must only be filed with the first Certificate of Interest or, subsequently, if information changes during the pendency of the appeal. Fed. Cir. R. 47.5(b).

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

☒ None/Not Applicable ☐ Additional pages attached

4. Legal Representatives (continued)

Chad S.C. Stover of Barnes &Thornburg LLP
Darrick J. Hooker of Barnes &Thornburg LLP
Benjamin Pendroff of Barnes &Thornburg LLP
Dana Sarros of Barnes &Thornburg LLP
David M. Lisch of Barnes &Thornburg LLP
William Burton of Barnes &Thornburg LLP

FORM 19. Certificate of Compliance with Type-Volume Limitations

Form 19
July 2020

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

Case Number: 2023-1922

Short Case Caption: Bearbox LLC v. Lancium LLC

Instructions: When computing a word, line, or page count, you may exclude any items listed as exempted under Fed. R. App. P. 5(c), Fed. R. App. P. 21(d), Fed. R. App. P. 27(d)(2), Fed. R. App. P. 32(f), or Fed. Cir. R. 32(b)(2).

The foregoing filing complies with the relevant type-volume limitation of the Federal Rules of Appellate Procedure and Federal Circuit Rules because it meets one of the following:

- ☒ the filing has been prepared using a proportionally-spaced typeface and includes 538 words.
- ☐ the filing has been prepared using a monospaced typeface and includes _____ lines of text.
- ☐ the filing contains _____ pages / _____ words / _____ lines of text, which does not exceed the maximum authorized by this court's order (ECF No. _____).

Date: 07/06/2023

Signature: /s/ Mark C. Nelson

Name: Mark C. Nelson